

JONATHAN TRUJILLO, #1838254	§	
VS.	§	CIVIL ACTION NO. 4:14cv390
DIRECTOR, TDCJ-CID	§	

Petitioner Jonathan Trujillo, an inmate confined in the Texas prison system, proceeding *pro se*, filed the above-styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. He filed the petition for the purpose of challenging his Hopkins County conviction for the offense of delivery of marijuana in a drug free zone, Case No. 0920903. On November 20, 2014, the Director filed a motion to dismiss the petition (docket entry #11) because it includes claims that were unexhausted. The Petitioner responded by filing a motion to grant the Director's motion to dismiss (docket entry #17).

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*v. Lynaugh*, 847 F.2d 211, 217-18 (5th Cir. 1988). “It is not enough that all the facts necessary to support the federal claim were before the state courts . . . or that a somewhat similar state-law claim was made.” *Anderson v. Harless*, 459 U.S. 4 (1982). Rather, the petitioner must have presented the substance of his federal constitutional claim to the state courts. *Id.*; *Picard*, 404 U.S. at 513. The state court must have been apprised of all of the facts and legal theories upon which the petitioner bases his assertions. *Picard v. Connor*, *supra*; *Dispensa v. Lynaugh*, 847 F.2d at 217; *Rodriguez v. McKaskle*, 724 F.2d 463 (5th Cir.), *cert. denied*, 469 U.S. 1039 (1984). In Texas, all claims must be presented to and ruled on by the Texas Court of Criminal Appeals. *Richardson v. Procnier*, 762 F.2d 429 (5th Cir. 1985); *Deters v. Collins*, 985 F.2d 789 (5th Cir. 1993). When a petition includes claims that have been exhausted along with claims that have not been exhausted, which is referred to as a “mixed petition,” then the entire petition must be dismissed for failure to exhaust. *Galtieri v. Wainwright*, 582 F.2d 348, 355 (5th Cir. 1978) (*en banc*).

In the present case, the Director appropriately characterized the present petition as a mixed petition and argued that the case should be dismissed. The Petitioner agreed. The Court finds the arguments persuasive and that the petition should be dismissed. It is therefore

**ORDERED** that the Director’s motion to dismiss (docket entry #11) is **GRANTED**. It is further

**ORDERED** that the Petitioner’s motion to grant the Director’s motion to dismiss (docket entry #17) is **GRANTED**. It is further

**ORDERED** that the petition for a writ of habeas corpus is **DISMISSED** without prejudice. It is finally

**ORDERED** that all motions not previously ruled on are **DENIED**.

**SIGNED this 19th day of January, 2015.**

  
AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE